Supreme Court, U.S.
FILED

051226 MAR 23 2006

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

HAROLD COX; SHIRLEY DAVIDSON; ROBERT STUBBLEFIELD; CYNTHIA HERRING; ELOISE EDWARDS; BETTY CURLEY; LEO EASTER, PETITIONERS

v.

CITY OF DALLAS TEXAS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MICHAEL M. DANIEL
Counsel of Record
LAURA B. BESHARA
DANIEL & BESHARA, P.C.
3301 Elm Street
Dallas, Texas 75226-1637
214-939-9222
214-741-3595 (Fax)

CURRY & TAYLOR • NASH D.C. • (202) 393-4141 • WWW.SSCINFO.COM

QUESTION PRESENTED

Whether black homeowners are denied the protection of an aggrieved persons claim under the Fair Housing Act, 42 U.S.C. § 3604, solely because they already own their homes where they allege their homes have been made ineligible for sale because of the conditions created by the City's racially discriminatory provision of zoning enforcement and other municipal services?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

RELEVANT PROVISIONS INVOLVED 1

STATEMENT 3

REASONS FOR GRANTING THE PETITION 11

CONCLUSION 23

APPENDIX

Circuit Court Opinion 1a

District Court Findings of Fact & Conclusion of Law 36a

District Court Opinion 72a

Order Denying Rehearing 102a

Relevant Provisions Involved 103a

Plaintiffs' Revised Fourth Amended Complaint 116a

TABLE OF AUTHORITIES

Page

CASES

CITY OF CHICAGO V. MATCHMAKER REAL ESTATE SALES CENTER, INC., 982 F.2D 1086 (7TH CIR. 1992) 12, 22

COX V. CITY OF DALLAS, 2004 WL 2108253 (N.D. TEX. 2004) 1

COX V. CITY OF DALLAS, 2004 WL 370242 (N.D. TEX. 2004) 1

COX V. CITY OF DALLAS, 256 F. 3D 281 (5TH CIR. 2001) 4

FAIR HOUSING OF MARIN V. COMBS, 285 F.3D 899 (9TH CIR. 2002) 22

GLADSTONE REALTORS V. VILLAGE OF BELLWOOD, 441 U.S. 91 (1979) 11, 17, 18

HALPRIN V. PRAIRIE SINGLE FAMILY HOMES OF DEARBORN PARK ASS'N, 388 F.3D 327 (7TH CIR. 2004) 21

HAMAD V. WOODCREST CONDOMINIUM ASS'N, 328 F.3D 224 (6TH CIR. 2003) 20

HARRIS V. ITZHAKI,183 F.3D 1043 (9TH CIR. 1999) 20

HAVENS REALTY CORP. V. COLEMAN, 455 U.S. 363 (1982) 11, 12, 18, 23

HUNTINGTON COMMITTEE INC. V. TOWN OF HUNTINGTON, 316 F.3D 357 (2D CIR. 2003) 20

JACKSON V. OKALOOSA COUNTY, FLA., 21 F.3D 1531, (11TH CIR. 1994) 20

JERSEY HEIGHTS NEIGHBORHOOD ASS'N V. GLENDENING, 174 F.3D 180 (4TH CIR.1999) 7, 21

LEBLANC-STERNBERG V. FLETCHER 67 F.3D 412, 424 - 25 (2D CIR. 1995), CERT. DENIED, 520 U.S. 1263 (1997) 20

MEYER V. HOLLEY, 537 U.S. 280 (2003) 14

NATIONWIDE MUTUAL INSURANCE CO. V. CISNEROS, 52 F. 3D 1351(6TH CIR. 1995), CERT. DENIED, 516 U.S. 1140 (1996) 14

SAN PEDRO HOTEL CO., INC. V. CITY OF LOS ANGELES, 159 F.3D 470 (9TH CIR. 1998) 20

SOUTHEND NEIGHBORHOOD IMP. ASS'N V. ST. CLAIR COUNTY, 743 F.2D 1207 (7TH CIR.1984) 7, 21

TENAFLY ERUV ASS'N, INC. V. BOROUGH OF TENAFLY, 309 F.3D 144 (3RD CIR. 2002), CERT. DENIED, 539 U.S. 942 (2003) 21

TRAFFICANTE V. METROPOLITAN LIFE INS. CO., 322 F.SUPP. 352 (N.D. CAL. 1971) 17

TRAFFICANTE V. METROPOLITAN LIFE INS. CO., 409 U.S. 205 (1972) 11, 16, 17, 18

TRAFFICANTE V. METROPOLITAN LIFE INS. CO., 446 F.2D 1158 (9TH CIR. 1971) 17

U.S. V. KOCH, 352 F.SUPP.2D 970 (D. NEB. 2004) 22

UNITED FARM BUREAU MUT. INS. CO., INC. v. METROPOLITAN HUMAN RELATIONS COM'N, 24 F.3D 1008 (7TH CIR. 1994) 20

WALKER v. TODD VILLAGE, LLC, 2006 WL 618812 (D.MD. 2006) 22

STATUTES

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1331 3

42 U.S.C. § 3601(f) 13

42 U.S.C. § 3601(i) 13

42 U.S.C. § § 3604, 3605, 3606 13

42 U.S.C. § 3604 ..... *passim*

42 U.S.C. § 3604(a) 6, 7

42 U.S.C. § 3604(b) 10

42 U.S.C. § 3613(a)(1)(A) 3, 13, 19

42 U.S.C. § 3616(a) 3, 22

42 U.S.C. §§ 3601, 3613 16

42 U.S.C. § 6972 4

42 U.S.C. § 1981 9

24 C.F.R. § 100.70 3

RULES

24 C.F.R. § 100.70(D)(4) 15

24 C.F.R. PART 100 16

24 C.F.R. §125.401 ..... 3, 22

OTHER AUTHORITIES

DOUGLAS, "STANDING ON SHAKY GROUND: STANDING UNDER THE FAIR HOUSING ACT," 34 AKRON L. REV. 613 (2001) 22

SCHWEMM, "THE FAIR HOUSING ACT AFTER TWENTY YEARS," 6 YALE LAW AND POLICY REVIEW 375, 381-382 (1988) 22

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fifth Circuit (Pet. App. 1a-35a) is reported at 430 F. 3d 734. The opinions of the U.S. Magistrate Judge (Pet. App. 36a - 71a [district court findings and conclusions]; Pet. App. 72a-101a [district court summary judgment opinion]) are unreported in the Federal Supplement but are in the WestLaw reports at *Cox v. City of Dallas*, 2004 WL 2108253 (N.D. Tex. 2004) and *Cox v. City of Dallas*, 2004 WL 370242 (N.D. Tex. 2004).

JURISDICTION

The judgment of the U.S. Court of Appeals for the Fifth Circuit was entered on November 9, 2005. A petition for rehearing en banc was denied on December 23, 2005. Pet. App. 102a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

1. Section 3602 of Title 42 of the United States Code provides, in part:

> As used in this subchapter—
>
> . . .
>
> **(f)** "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.
>
> . . .
>
> **(i)** "Aggrieved person" includes any person who-

(1) claims to have been injured by a discriminatory housing practice; or
(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

. . .

2. Section 3604 of Title 42 of the United States Code provides, in part:

It shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin. 42 U.S.C.§ 3604.

3. Section 3613(a)(1)(A) of Title 42 of the United States Code provides:

(a) Civil action

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2

> years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

The provisions of 42 U.S.C. § 3616(a) (Pet. App. 103a), 24 C.F.R. § 100.70 (Pet. App. 115a), and 24 C.F.R. §125.401 (Pet. App. 114a) are set out in the appendix at the pages cited.

STATEMENT

The district court had jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 42 U.S.C. § 3613(a)(1)(A).

Petitioners are black homeowners who purchased their homes in their Dallas, Texas neighborhood in the 1970s. The neighborhood was predominantly white in 1970 and predominantly black by 1980. The illegal landfill in their neighborhood began operation in 1982 after petitioners had purchased their homes and after the neighborhood had become predominantly black. Pet. App. 75a. The illegal landfill covered 85 acres and operated for 15 years until 1997. Pet. App. 2a, 61a - 62a. The landfill caught fire and burned for seven months in 1988. Pet. App. 5a. The landfill again caught fire and burned for three months in 1997. Pet. App. 8a.

The summary judgment evidence showed that the zoning for the site did not permit the use of the site as a landfill. Pet. App. 60a. The City issued Certificates of Occupancy to the owners of the illegal landfill which

were based on applications clearing stating the owners' intent to fill the landfill with solid waste. The City was aware of the illegal landfill. City contractors used the site to dispose of demolition waste. The City's efforts to terminate the use of the illegal landfill were sporadic and ineffective. Pet. App. 94a. Petitioners identified two similarly situated sites located in predominantly white neighborhoods. In those white areas, the City remedied illegal dumping and/or mining. Pet. App. 95a. Petitioners' summary judgment evidence was sufficient to raise an issue of fact on the discriminatory effects of the City's actions. Pet. App. 96a.

The lawsuit originally involved two separate sets of claims, one set involving the Resource Conservation and Recovery Act [RCRA], 42 U.S.C. § 6972, allegations and the second involving allegations of racial discrimination. Pet. App. 80a - 81a. The RCRA claims were tried first. The district court found that the City of Dallas had violated 42 U.S.C. § 6972 by contracting with demolition contractors that disposed of City generated demolition debris at the illegal landfill adjacent to petitioners' homes. The district court ordered the City to eliminate the conditions that were a substantial endangerment to the environment, health, and safety. The Court of Appeals for the Fifth Circuit upheld the district court's judgment on the RCRA claim finding that the illegal landfill had caused pollution, was an ongoing fire hazard, was open to the public, posed a risk of further contamination, and that the City had played a role in the creation of the dangers to the adjoining neighborhood. *Cox v. City of Dallas*, 256 F. 3d 281, 285, 300 (5th Cir. 2001).

Subsequently the race discrimination claims were assigned to a U.S. Magistrate Judge for trial. Pet. App. 81a.

Plaintiffs' Fourth Amended Complaint Revised contained the following allegations that the City was implementing a race neutral policy with racially discriminatory effects:

> 73. The City of Dallas implemented a policy that allowed the dumping of demolition debris, including wood, shingles, and other biodegradeable material at illegal landfills by City demolition contractors. The racially discriminatory effect of this City policy is that the illegal landfills used are disproportionately located in minority areas. Pet. App. 117a.
>
> . . .
>
> 75. From 1980 through 1996, the City of Dallas City Council approved demolition contracts with contractors who were using persons or companies to dump demolition debris from City demolitions at the Deepwood site, and at other illegal landfills located in predominantly or majority minority, usually African American, neighborhoods. Pet. App. 117a.

Petitioners alleged specific facts showing that the City's actions directly affected the availability of dwellings and were connected to the sale of dwellings.

> 88. The City's actions directly affect the availability of the existing dwelling units in plaintiffs' neighborhoods by interfering with the owners' ability to make the dwelling units available to others by selling the dwelling units. The illegal dumping and the presence of the Deepwood site subject plaintiffs to a form of mortgage redlining whereby their ability to